HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT APPEAL No:934 OF 2007

Dated:26.11.2007

Between:

The Vizianagaram District Co operative Central Bank Limited rep by its General Manager, Vizianagaram & another

..Appellants

And

Poosapati Narayana Murthy Raju & another

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
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WRIT APPEAL No:934 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ appeal is filed by the appellants assailing the order of the learned single Judge passed in W.P.No:16102 of 2003 on 8.8.2007.

The 1st respondent herein is the writ petitioner and the appellants and the 2nd respondent herein are respondents in the writ petition. The status of the parties will be referred to as arrayed in the writ petition.

The writ petitioner has filed the writ petition seeking to declare the action of respondents-1 and 2 in seizing the tractor bearing No:A.P.35 T 1629 (Mahendra Make) on 5.5.2003 as illegal and to direct respondents-1 and 2 to pay a sum of Rs.50,000/- towards adhoc compensation to the petitioner. The learned single Judge having observed that the respondents have failed to release the vehicle in question immediately and thereby, it indicates that the respondents have no respect for the orders of the Court and since the contempt case was closed and since the petitioner has come forward to receive the compensation, the respondents are directed to pay the compensation of Rs.10,000/- to the petitioner, allowed the writ petition. Having aggrieved by the same, the present writ appeal is filed by respondents-1 and 2.

Heard and perused the material available on record as well as the order impugned.

It is contended by the learned counsel appearing on behalf of the respondents-appellants that though the judgment of the Division

Bench of this Court has been relied upon while awarding compensation, but the same has been set aside by the Apex Court in Civil Appeal No:4010 of 1989. Therefore, the order of the learned single cannot be sustained.

On the other hand, it is contended by the learned counsel for the writ petitioner that the provisions of section 94 of the A.P. Co operative Societies Act, do not confer any right to respondents to proceed against the tractor and therefore, the seizure of the vehicle is without jurisdiction. Since the question of law involved under section 94 of the Act has not been adjudicated, the matter may be remanded for fresh disposal after considering the said question of law.

Before going into the merits of the case, it is pertinent to note that the fact that remains undisputed is that the judgment of the Division Bench of this Court holding that the tractor is not liable for attachment for non payment of instalments of loan amount, is set aside by the Apex Court in Civil Appeal No:4010 of 1989 and batch. Apart from that, a perusal of the order of the learned single Judge, clearly goes to show that before going to resolve the issue in the writ petition, the question of law as required under section 94 of the Act, has not been adjudicated.

In this background of the matter and in view of the principles laid down by the Apex Court in Civil Appeal No:4010 of 1989 wherein it is held that this Court did not correctly construe the provisions of section 103 of the Act and this Court has erred in coming to the conclusion that the tractors which stood mortgaged with the appellant, would not be seized or sold, We feel that the order of the learned

single Judge, suffers legal infirmity and thereby, the order impugned is liable to be set aside.

At this stage of the proceedings, the learned counsel for the petitioner seeks liberty to the petitioner to agitate his rights if seizure is made by the respondent under section 94 of the Act. Accordingly, liberty is granted to the petitioner to agitate his rights, if any seizure is made under section 94 of the Act or if any order is passed under section 94 of the Act, before the appropriate authority.

Subject to the above observation, this writ appeal is allowed setting aside the order impugned.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 26th November, 2007
Gurce/ Nn.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT APPEAL No:934 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

26/11/2007